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No. 96-600

Supreme Court, U.S.
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In The
Supreme Court Of The United States
October Term, 1996

RICHARD LAPOINTE,
Petitioner,
v.
STATE OF CONNECTICUT,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CONNECTICUT SUPREME COURT

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the subjective understanding of a defendant concerning freedom to leave may be considered along with other relevant circumstances in determining whether he is in custody during an interrogation?

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CONSTITUTIONAL PROVISIONS AND SUPREME COURT RULES INVOLVED

United States Constitution, Amendment XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Supreme Court Rule 10

Considerations Governing Review on Writ of Certiorari

1. A review on writ of certiorari is not a matter of right, but of judicial discretion. Petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state supreme court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

(c) When a state court or a United States court of appeals has decided an important question of federal law which has not

been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with the applicable decisions of this Court.

OPINION BELOW

The decision of the Connecticut Supreme Court is reported at *State v. LaPointe*, 237 Conn. 694 (1996). It is set forth in petitioner's appendix at 1a-66a.

STATEMENT OF THE CASE

A. Proceedings

The petitioner was convicted by a jury of capital felony in violation of General Statutes § 53a-54b(7), arson murder in violation of General Statutes § 53a-54d, felony murder in violation of General Statutes § 53a-54c, murder in violation of General Statutes § 53a-54a, arson in the first degree in violation of General Statutes § 53a-111, assault in the first degree in violation of General Statutes § 53a-59(a)(1), sexual assault in the first degree in violation of General Statutes § 53a-70(a), and kidnapping in the first degree in violation of General Statutes § 53a-92(a)(2)(A). After a penalty phase trial, the jury rejected the death penalty, and the petitioner was sentenced to life in prison without the possibility of release in accordance with General Statutes § 53a-46a(f). On appeal to the Connecticut Supreme Court, the petitioner challenged the admissibility of two statements given to police officers, claiming they were taken in violation of *Miranda v. Arizona*, 384 U.S. 426 (1966), while he was in custody.[1] His

[1] Other claims made in the Connecticut Supreme Court are not raised here.

convictions were affirmed on appeal. *State v. LaPointe*, 237 Conn. 694 (1996).

B. Relevant Facts.

The petitioner agreed to come to the police station to talk with officers about the rape and murder of his wife's grandmother. After being driven to the station parking lot in an unmarked car as he had requested, the petitioner walked unaccompanied into the building. 237 Conn. at 704. He was met by an officer and read his constitutional rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). He stated that he understood his rights, initialed each right individually, agreed to talk with the police and signed a waiver of rights card. 237 Conn. at 704-704. Thereafter, the petitioner was escorted to an interview room and was again told he was free to leave.[2] There, the officer expressed his belief that the petitioner had committed the crime. *Id.* at 705-706. After talking with the officer for approximately one hour, the petitioner admitted that he had killed the victim and signed a written state-

[2] On the way to the interview room, the police took the petitioner through the detective office where there were some props on the bulletin board and some writing on the blackboard which indicated that there was evidence against the petitioner. However, the petitioner was in that office no longer than 10 seconds and commented only on a photograph of the victim. He stated at trial that he had not seen any of the props. 237 Conn. at 705, n.16.

ment. *Id.* The interview continued for approximately eight more hours, during which time, the petitioner made more admissions, provided more details of the crime and signed two more written statements. A second officer arrived to question the petitioner after the first four hours, but at that time, the latter was again reminded that he was free to leave and did not have to talk to the police. The petitioner agreed to stay and talk. He never asked to leave. Twice during the interview, the petitioner went to the bathroom by himself. There were two exits from the police station between the interview room and the bathroom. The petitioner was given food and drink. He was also offered a telephone to call a lawyer or his wife, but he did not do so. After the interview, the petitioner left the police station with relatives and told his mother-in-law that he knew that he had been free to leave the police station at any time. 237 Conn. at 706-15; 724-27.

REASONS FOR DENYING THE PETITION

I. There Is No Important Issue of Federal Law Involved In This Case Because The Finding Of Lack Of Custody Was Based On An Objective Assessment Of The Totality Of Many Circumstances And Was Not Determined By The Subjective Understanding Of The Petitioner.

This case involves no new or important issue of federal law. The trial court and the Connecticut Supreme Court both assessed a totality of objective factors commonly considered in determining whether a defendant is in custody during an interrogation. The custody inquiry was conducted according to principles enunciated by this Court in *Stansbury v. California*, 511 U.S. 1526 (1994). Thus, using an objective test, the Connecticut Supreme Court determined, that there was no "formal arrest or restraint on freedom of movement of the degree associated with formal arrest'". 237 Conn. at 725, quoting *Stansbury*, 114 S.Ct. at 1529. Although the petitioner frames his question presented as if to imply that the court below looked only at the subjective understanding of the petitioner as to whether he was free to leave the police station, the Connecticut Supreme Court's opinion demonstrates that it properly considered all of the following facts: the defendant was told repeatedly that he was free to leave; he was

never restrained in any way; he was allowed unrestrained and unaccompanied movement about the police station during his stay; he was allowed to leave when the interview was over; he never asked to leave or for a ride home during the interview; the petitioner had had previous experience with the police when he had been interviewed at the police station and allowed to leave afterwards. *See* 237 Conn. at 727. It was based on these objective circumstances that the Connecticut courts found no custody. *Cf. Oregon v. Mathiason*, 429 U.S. 492, 495 (1977); *California v. Beheler*, 463 U.S. 1121, 1122 (1993) (considering in both cases the facts that the suspects had gone voluntarily to the police station, had been informed that they were not under arrest, were permitted to leave after the interview).

In fact, in its custody discussion, the Connecticut Supreme Court mentions only once the fact that the petitioner knew he could terminate the interview and leave the police station at any time. *See* 237 Conn. at 726. The court found that subjective understanding relevant to the assessment of the credibility of the police testimony that the defendant was told he was not in custody and was free to leave. Thus, the court below did not even consider

the petitioner's subjective understanding as an indication of lack of custody, much less as dispositive.

Furthermore, there is no error in using a defendant's subjective understanding of his freedom as indicative of the credibility of police testimony. Contrary to the petitioner's argument, there is nothing in *Stansbury v. California*, which would indicate otherwise. *Stansbury* holds that the custody determination is to be based on objective factors, and that the subjective understanding of the police about custody is not relevant unless communicated to the defendant. That holding does not preclude considering the subjective understanding of a suspect as relevant to the determination of the actual objective circumstances. To consider a suspect's subjective understanding as relevant to the credibility of the officers and the actual circumstances does not make the custody determination non-objective. On the contrary, to close one's eyes to such a subjective understanding would result in the loss of relevant information, which, while not determinative, is helpful to the court in finding the objective facts.

Because the custody determination was made on an objective assessment of the totality of the circumstances surrounding the interrogation, there is no federal issue for this Court to address.

See, e.g. Thompson v. Keohane, __ U.S. __, 116 S.Ct. 452, 465 (1995) (custody is based on all the circumstances surrounding the interrogation and an objective assessment of whether those circumstances indicate restraint on freedom of movement).

II. This Court Should Not Grant Review In This Case Because Even If The Petitioner Was In Custody, There Is No Constitutional Issue To Be Resolved. He Was Given Miranda Warnings And Signed A Waiver Card Prior To Any Questioning.

This Court should not grant certiorari because, even if he was in custody, the petitioner was not deprived of any constitutional rights. Prior to his statements, the defendant was read his constitutional rights. He waived them. Thus, his statements were not in violation of *Miranda v. Arizona*, and were admissible regardless of custody.

Although he mentions that he was given *Miranda* warnings and waived his rights immediately after entering the police station, the petitioner claims that he was not read his rights after his situation became custodial, which he claims was not until after he gave his first incriminating statement, approximately one hour after

arriving at the station.[3] In other words, his claim is that he should have been read his rights again after the first statement.

Although the respondent argued that the *Miranda* warnings and waivers were effective throughout the interview, the Connecticut Supreme Court discussed this issue only in a footnote because it found no custody. *See* 127 Conn. at 726 n.41. However, the respondent continues to maintain that only one recitation of *Miranda* warnings followed by a waiver was required, as the situation and locale of the interview did not change. No coercive or restraining circumstances were instituted after the first statement, and the petitioner was in fact told he was free to leave and did not have to speak with the police after that statement was given. The petitioner's second statement was given to the same officer. The only change in circumstances during the entire interview was the change of interviewing officers after four hours. The third statement was given to the second officer. There is no reason for the original warnings and waivers to be deemed ineffective merely because of a change in interviewers, particularly where the petitioner was reminded that he was free to leave and did not

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[3] Accordingly, the petitioner did not challenge the admissibility of the first statement. Nor did he challenge any statements given to a third officer, just prior to the petitioner's departure from the police station.

have to speak with the second officer. *See, e.g. United States v. Hopkins*, 433 F.2d 1041 (5th Cir. 1970), *cert. denied*, 401 U.S. 1013 (1971) (change in interviewing officers does not invalidate original *Miranda* warnings and waivers). *See also*, *Henne v. Fike*, 563 F.2d 809, 814 (7th Cir. 1977), *cert. denied*, 434 U.S. 1072 (1978) (passage of nine hours between warnings and waiver does not invalidate waiver); *LaFave & Israel*, *Criminal Procedure*, (1984), § 6.8, p.250. (generally fresh warnings are not required after passage of hours or even days).

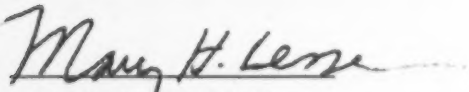
Should this Court consider granting the petition in this case, the respondent will again argue that the custody issue is meaningless because the petitioner received and waived his *Miranda* rights prior to the taking of any of the statements.

CONCLUSION

The petitioner presents no federal question worthy of review. Therefore, the respondent respectfully urges this Court to deny the petition.

Respectfully submitted,

STATE OF CONNECTICUT
THE RESPONDENT

By: 

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